

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARREL LEE SMITH,

Petitioner,

v.

WILLIAM GORE,

Respondent.

Civil No. 11-0802 WQH (RBB)

**ORDER DISMISSING CASE
WITHOUT PREJUDICE**

Petitioner, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

FAILURE TO SATISFY FILING FEE REQUIREMENT

Petitioner has failed to pay the \$5.00 filing fee and has failed to move to proceed in forma pauperis. This Court cannot proceed until Petitioner has either paid the \$5.00 filing fee or qualified to proceed in forma pauperis. See Rule 3(a), 28 U.S.C. foll. § 2254.

ABSTENTION

In addition, the Petition must be dismissed because it is clear that this Court is barred from consideration of his claims by the abstention doctrine announced in *Younger v. Harris*, 401 U.S. 37 (1971). Under *Younger*, federal courts may not interfere with ongoing state criminal proceedings absent extraordinary circumstances. *Id.* at 45-46; see *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982) (*Younger* “espouse[d] a strong federal policy against federal-court interference with pending state judicial proceedings.”) These

1 concerns are particularly important in the habeas context where a state prisoner's conviction may
 2 be reversed on appeal, thereby rendering the federal issue moot. *Sherwood v. Tompkins*, 716
 3 F.2d 632, 634 (9th Cir. 1983).

4 Absent extraordinary circumstances, abstention under *Younger* is required when: (1) state
 5 judicial proceedings are ongoing; (2) the state proceedings involve important state interests; and
 6 (3) the state proceedings afford an adequate opportunity to raise the federal issue. *Columbia*
 7 *Basin Apartment Ass'n v. City of Pasco*, 268 F.3d 791, 799 (9th Cir. 2001). All three of these
 8 criteria are satisfied here. At the time Petitioner filed the instant Petition, he admits that he is
 9 awaiting jury trial on criminal charges in San Diego County Superior Court. (*See* Pet. at 3.)
 10 Thus Petitioner's criminal case is still ongoing in the state courts. Further, there is no question
 11 that the state criminal proceedings involve important state interests.

12 Finally, Petitioner has failed to show that he has not been afforded an adequate
 13 opportunity to raise the federal issues on direct appeal. Petitioner offers nothing to support a
 14 contention that the state courts do not provide him an adequate opportunity to raise his claims,
 15 and this Court specifically rejects such an argument. Indeed, Petitioner's claims that the
 16 prosecution presented false testimony at his preliminary hearing, his due process and fair trial
 17 rights were violated, and the prosecution withheld exculpatory evidence are just the type of
 18 claims that the state courts provide an opportunity to raise on direct appeal and abstention is
 19 therefore required.¹ *See Huffman v. Pursue, Ltd.*, 420 U.S. 592, 608 (1975) (*Younger* applies
 20 to state appellate proceedings as well as ongoing proceedings in state trial court); *see also Drury*
 21 *v. Cox*, 457 F.2d 764, 764-65 (9th Cir. 1972) ("[O]nly in the most unusual circumstances is a
 22 defendant entitled to have federal interposition by way of injunction or habeas corpus until after
 23 the jury comes in, judgment has been appealed from that the case concluded in the state courts.")

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 28 ¹ That Petitioner has raised his claims in a petition for writ of habeas corpus in the California Appellate
 and Supreme Courts, (*see* Pet. at 3), does not change the fact that direct criminal proceedings are ongoing and
 therefore abstention is required.

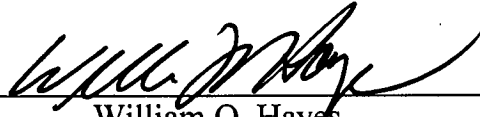
CONCLUSION

For the foregoing reasons, the Petition is **DISMISSED** without prejudice. *See Juidice v. Vail*, 430 U.S. 327, 337 (1977) (holding that if *Younger* abstention applies, a court may not retain jurisdiction but should dismiss the action); *Younger v. Harris*, 401 U.S. 37 (1971).

IT IS SO ORDERED.

DATED: _____

4/19/11



William Q. Hayes
United States District Judge